

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

10/30/2001

CLERK OF THE COURT
FORM L000

HONORABLE MICHAEL D. JONES

P. M. Espinoza
Deputy

LC 2001-000504

FILED: _____

STATE OF ARIZONA

GERALD R GRANT

v.

MARY I MCGEE

MARY I MCGEE
1686 SEWARD AVE #6E
BRONX NEW YORK 10473-0000

BUCKEYE JUSTICE COURT
DISPOSITION CLERK-CCC
FINANCIAL SERVICES-CCC
JUDGE G.M. OSTERFELD
BUCKEYE JUSTICE COURT
100 N APACHE RD, STE C
BUCKEYE AZ 85326

MINUTE ENTRY

BUCKEYE JUSTICE COURT

Cit. No. #21197

Charge: A. SPEED GREATER THAN POSTED
B. STOP SIGN VIOLATION

DOB: 07/13/67

DOC: 04/28/01

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This Court has jurisdiction of this appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

This case was assigned to this division on October 16, 2001. This decision is made within 30 days as required by Rule 9.8, Maricopa County Superior Court Local Rules of Practice. The Court has reviewed and considered the tape recordings of the proceedings from the Buckeye Justice Court, the Court's file and the Memorandum received from Appellant.

Appellant, Mary I. McGee, was charged with Speed Greater than Posted, in violation of A.R.S. Section 28-701(A), a Civil Traffic violation; and a Stop Sign Violation in violation of A.R.S. 28-855(B), also a Civil Traffic violation. Appellant entered pleas of Not Responsible and the matter proceeded to trial on July 3, 2001 before the Honorable G.M. Osterfeld, Justice of the Peace for the Buckeye Precinct Justice Court.

The only issue raised by the Appellant concerns the sufficiency of the evidence to warrant the conviction and finding of responsibility. When reviewing the sufficiency of the evidence, an appellate court must not re-weigh the evidence to determine if it would reach the same conclusion as the original trier of fact.¹ All evidence will be viewed in a light most favorable to sustaining a conviction and all reasonable inferences will be resolved against the Defendant.² If conflicts in evidence exists, the appellate court must resolve such conflicts in favor of sustaining the verdict and against the Defendant.³ An appellate court shall afford great weight to the trial court's assessment of witnesses' credibility and should not reverse the trial court's weighing of evidence absent clear

¹ *State v. Guerra*, 161 Ariz. 289, 778 P.2d 1185 (1989); *State v. Mincey*, 141 Ariz. 425, 687 P.2d 1180, cert.denied, 469 U.S. 1040, 105 S.Ct. 521, 83 L.Ed.2d 409 (1984); *State v. Brown*, 125 Ariz. 160, 608 P.2d 299 (1980); *Hollis v. Industrial Commission*, 94 Ariz. 113, 382 P.2d 226 (1963).

² *State v. Guerra*, supra; *State v. Tison*, 129 Ariz. 546, 633 P.2d 355 (1981), cert.denied, 459 U.S. 882, 103 S.Ct. 180, 74 L.Ed.2d 147 (1982).

³ *State v. Guerra*, supra; *State v. Girdler*, 138 Ariz. 482, 675 P.2d 1301 (1983), cert.denied, 467 U.S. 1244, 104 S.Ct. 3519, 82 L.Ed.2d 826 (1984).

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error.⁴ When the sufficiency of evidence to support a judgment is questioned on appeal, an appellate court will examine the record only to determine whether substantial evidence exists to support the action of the lower court.⁵ The Arizona Supreme Court has explained in State v. Tison⁶ that "substantial evidence" means:

More than a scintilla and is such proof as a reasonable mind would employ to support the conclusion reached. It is of a character which would convince an unprejudiced thinking mind of the truth of the fact to which the evidence is directed. If reasonable men may fairly differ as to whether certain evidence establishes a fact in issue, then such evidence must be considered as substantial.⁷

Though not raised by Appellant, this Court discovered upon reviewing the tape recording of the proceeding before Judge Osterfeld, that the trial judge interrupted and addressed a defense witness (the mother of Appellant) in an uncivil and demeaning tone of voice. The judge ordered the witness to "listen to the question" in a manner that can only be described as intimidating. Appellant's rights of due process embodied in Article II, Section 4 of the Arizona Constitution guarantee her the right to present her defense without harassment or intimidation by the trial judge. Though the trial judge may not have agreed with the witness and may have been frustrated with the witness' inability to be as articulate as the judge would have preferred, the trial judge has an obligation to listen to the testimony and consider it.

Cannon 3(B)(4) provides:

⁴ In re: Estate of Shumway, 197 Ariz. 57, 3 P.3rd 977, review granted in part, opinion vacated in part 9 P.3rd 1062; Ryder v. Leach, 3 Ariz. 129, 77P. 490 (1889).

⁵ Hutcherson v. City of Phoenix, 192 Ariz. 51, 961 P.2d 449 (1998); State v. Guerra, supra; State ex rel. Herman v. Schaffer, 110 Ariz. 91, 515 P.2d 593 (1973).

⁶ SUPRA.

⁷ Id. At 553, 633 P.2d at 362.

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A judge shall be patient, dignified and courteous to litigant's, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity, and shall require similar conduct of lawyers, and of staff, court officials and other subject to the judge's direction and control.⁸

The inability to present one's case or defense free of intimidation from another, or the trial judge, is an essential component of the due process right to a fair trial. The denial of such an essential component of due process constitutes fundamental error.⁹

IT IS THEREFORE ORDERED reversing the judgments of responsibility and sanctions imposed by the Buckeye Justice Court.

IT IS FURTHER ORDERED dismissing this matter.

IT IS FURTHER ORDERED that the Clerk of this Court or the Clerk of the Buckeye Justice Court shall refund any bond or sanctions posted in this matter pending appeal.

⁸ Rule 81, Rules of the Supreme Court (code of Judicial Conduct).

⁹ See *State v. Flowers*, 159 Ariz. 469, 768 P.2d 201 (App. 1989).